

RECEIVED  
CENTRAL FAX CENTER

AUG 01 2006

1 includes a driveway in said space in the building for movement of vehicles on the  
2 driveway, and including the step,  
3 introducing mixed treated grain from the ~~mixing~~ treating unit on the driveway  
4 and moving the vehicle from the building.

**REMARKS****VI. CLAIM REJECTIONS UNDER 35 USC 112**

5  
6  
7  
8  
9 The Examiner has rejected claims under 35 USC 112 at pages 4-8, paragraphs 15-  
10 41.

11 1. At page 5 paragraph 16 the Examiner rejects claim 13 as containing subject  
12 matter which was not described in the specification in such a way as to enable one skilled  
13 in the art to which it pertains, or with which it is most nearly connected, to make and/or  
14 use the invention.

15 Claim 13 has been amended as follows:

16 power transmitting means operably connecting the power means and the  
17 shaft and extending into the drum and underlying the hog back ~~throughout its~~  
18 ~~extent to the shaft; the power transmitting means~~ and thereby shielded by the  
19 hogback from grain falling through the drum.

20  
21 The Examiner is requested to withdraw the rejection and to allow the claim as  
22 amended.

23  
24 2. At page 5 paragraph 18 the Examiner states that Claims 1-15 and 17 are

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 871 273 8300  
by Floyd E. Ivey

Application No. 09/638,017

1 rejected under 35 USC 112 as being indefinite for failing to particularly point out and  
2 distinctly claim the subject matter which applicant regards as the invention. It is  
3 understood by your applicant that paragraphs 17 through 41 pertain to rejections under 35  
4 USC 112 second paragraph.

5  
6 3. At page 5 paragraph 19 the Examiner states that there is insufficient antecedent  
7 basis for the Claim 1 limitation "the bottom opening of the seed treater" and suggests that  
8 "the bottom opening of the seed treater" instead read - the bottom opening of the drum-.

9 The Examiner is respectfully directed to the Specification at page 5/line 23 to page  
10 6/line 2 which identifies the element addressed in this rejection stating the following:

11 The device has a flat, annular top closure plate 48, with a central inlet  
12 opening or feed hole 50, surrounded by a cylindrical tube 52, and has a conical  
13 bottom closure plate 54, with a central discharge opening 56, forming a bottom  
14 bowl.

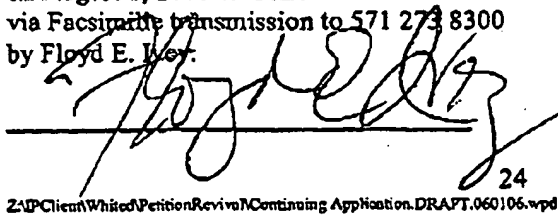
15  
16 Here the element is seen to be the "central discharge opening 56." Claim 1 has  
17 been amended to claim "central discharge opening (56)". Amendments have likewise  
18 been made to Claim 2, claim 16 and claim 18. The Examiner is requested to withdraw the  
19 rejection and to allow the claims as amended.

20  
21 4. At page 6 paragraph 20 the Examiner states that it is unclear what "it" refers to  
22 in claim 2, line 7. It is noted that "it" refers to the drum (44). Claim 2 has been amended.

23  
24 5. At page 6 paragraph 21 the Examiner states that it is unclear whether "the  
25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

  
24  
Z:\PClient\Whited\Petition Revival\Continuing Application.DRAFT.060106.wpd

1 bearing means" in claim 3/line 4 refers to the upper first bearing means or the lower first  
2 bearing means or both.

3 The Examiner is referred to the Specification at page 6/line 22 to page 7/3 which  
4 identifies the lower bearing support 76 and which states:

5 The seed treater includes a main shaft 68, extending nearly the height of the  
6 drum 44, being driven by a drive means at the bottom, referred to below. The shaft  
7 is mounted in an upper bearing 70 and a lower bearing 72, the upper bearing 70  
8 being mounted on an upper bearing support 74, and the lower bearing on and under  
9 a lower bearing support 76.

10

11 Claim 3 has been amended to refer to the "lower bearing support (76)" as follows:  
12 upper and lower first-bearing means for supporting the shaft.  
13 upper and lower bearing support second means supporting the bearing means  
14 within the drum, and

15

16 6. At page 6 paragraph 22 the Examiner states that in claim 4/line 2 there is lack of  
17 antecedent basis for "the supporting means".

18 The Examiner is referred to the Specification at page 6/line 22 to page 7/line 3 re:  
19 the upper bearing support (74) and page 9/lines 21-page 10/line 6 re: the lower bearing  
20 support (76). Claims 3 and 4 are amended.

21 Claim 3 is amended as follows:

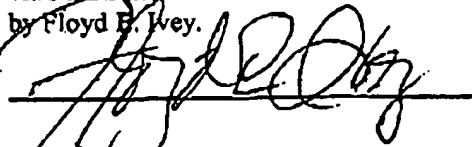
22 bearing supporting second means supporting the bearing means within the  
23 drum, and

24 the bearing second supporting means being operable for detachably mounting the

25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



25

Z:\PC\Hed\White\Petition\Revival\Continuing Application.DRAFT.060106.wpd

1 second bearing supporting means on the surrounding wall.

2  
3 Claim 4 is amended as follows:

4 the drum is cylindrical and the bearing supporting means includes upper  
5 and lower bearing support means includ[es] ing [an] upper a protected upper  
6 bearing support between the spreader and the upper bowl,

7  
8 The Examiner is respectfully requested to withdraw the rejection and to allow  
9 claim 4 as amended.

10  
11 7. At page 6 paragraph 23 the Examiner states that in claim 4/line 12 there is lack  
12 of antecedent basis for "the upper bearing means" and that "[A]n upper protected bearing  
13 support" is not considered to be sufficient antecedent basis for "the upper bearing means".

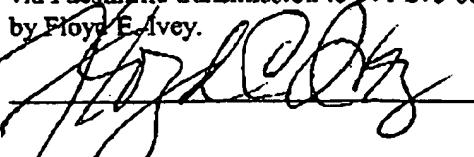
14 The Examiner is respectfully referred to the immediately preceding Response to  
15 the rejection at page 6/paragraph 22. The Examiner is requested to withdraw the rejection  
16 and to allow claim 4 as amended.

17  
18 8. At page 6 paragraph 24 the Examiner states that in claim 4/line 13, it is unclear  
19 if "the plate" refers to the horizontal plate or one of the end plates. The Examiner is  
20 referred to the specification starting at page 7/line 3-9 which identifies the "central plate  
21 (82), on which the bearing 70 is directly mounted." Claim 4 at line 13 refers to the  
22 horizontal plate and not one of the end plates.

23 The Examiner is respectfully requested to withdraw the rejection and to allow  
24 claim 4 as amended.

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



26

Z:\PClient\09\09PetitionRevival\Continuing Application.DRAFT.060106.wpd

1 9. At page 6 paragraph 25 the Examiner states that claim 5 there is lack of  
2 antecedent basis for "the outlet ends of the fluid flow hoses" and that no hoses have been  
3 recited in claim 5 or its parent claims.

4 The Examiner is referred to the specification page 7/lines 10-17 stating:

5 Mounted in the support 74, are tubes 84, arranged oppositely and on a  
6 common diameter for conveying liquid chemicals into the device. These tubes lead  
7 through the drum and under the bearing plate 82 and empty downwardly into the  
8 drum. The outer ends of the tubes 84 lead through the end plates 80, and the  
9 surrounding wall 46, through an exterior fitting 88, for attachment to lead-in lines  
10 89 carrying the chemicals to the device.

11  
12 Claim 5 has been amended as follows:

13 the upper bearing support includes holes in its structures for receiving the  
14 outlet ends of the fluid flow hoses tubes (84) from the exterior leading to a  
15 position adjacent the shaft for conducting fluid into the drum to a position adjacent  
16 the shaft.

17  
18 10. At page 6 paragraph 26 the Examiner states that in claim 5 it is unclear what  
19 the scope of "its structures" is.

20 The Examiner is referred to the Specification page 7 lines 4-17 as follows:

21 The upper bearing member 70 is shown in Figs. 7 and 8 and is fixedly  
22 mounted in the device. It includes a pair of spaced parallel arms 78, with curved  
23 end plates 80, the latter being detachably secured to the inner surface of the wall  
24 46, and having a central plate 82, on which the bearing 70 is directly mounted.

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

27

Z:\PClient\White\Petition\Revival\Continuing Application.DRAFT.060106.wpd

1 Mounted in the support 74, are tubes 84, arranged oppositely and on a common  
2 diameter for conveying liquid chemicals into the device. These tubes lead through  
3 the drum and under the bearing plate 82 and empty downwardly into the drum.  
4 The outer ends of the tubes 84 lead through the end plates 80, and the surrounding  
5 wall 46, through an exterior fitting 88, for attachment to lead-in lines 89 carrying  
6 the chemicals to the device.

7  
8 The reference to "its structures" is to the curved end plates (80) through which the  
9 outer ends of the tubes 84 lead through an exterior fitting (88) for attachment to lead-in  
10 lines (89) carrying the chemicals to the device.

11 Claim 5 has been further amended as follows:

12 the upper bearing support includes holes in curved end plates (80) its  
13 structures for receiving the outlet ends of the fluid flow hoses tubes (84) from  
14 the exterior leading to a position adjacent the shaft for conducting fluid into the  
15 drum to a position adjacent the shaft.

16  
17 The Examiner is requested to withdraw the rejection and to allow claim 5 as  
18 amended.

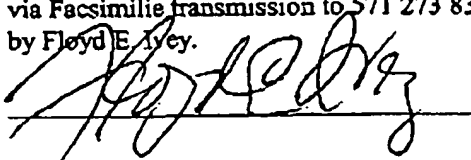
19  
20 11. At page 6 paragraph 27 the Examiner states that in claim 5, it is unclear what  
21 "the exterior" refers to and "the exterior of what?" The Examiner is referred to the  
22 specification at page 7 as recited in the Response to paragraph 26.

23 Claim 5 has been further amended as follows:

24 tubes (84) are mounted in the upper bearing support (74) and are arranged

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



1 oppositely and on a common diameter for conveying liquid chemicals into the  
2 device drum (44);

3 the upper bearing (70) is mounted on the upper bearing support (74).  
4 curved end plates (80) are distal to the upper bearing (70);

5 the curved end plates (80) [and] include[s] holes in its structures for  
6 receiving the outlet ends of the fluid flow hoses tubes (84) from the exterior leading to a  
7 position adjacent the shaft for conducting fluid into the drum to a position adjacent the  
8 shaft[.] and

9 the outlet ends of the fluid flow tubes 84 lead through the end plates 80,  
10 and the surrounding wall 46, through an exterior fitting 88, for attachment to lead-  
11 in lines 89 carrying the chemicals to the drum (44).

12  
13 The Examiner is requested to withdraw the rejection of claim 5 and to allow the  
14 claim as amended.

15  
16 12. At page 6 paragraph 28 the Examiner states that in claim 6 there is lack of  
17 antecedent basis for "the terminal ends of the fluid flow hoses" and that "no hoses have  
18 been recited in claim 6 or its parent claim.

19 Claim 5 has been amended to strike reference to hoses and to refer to fluid flow  
20 tubes (84). Claim 6 is amended as follows:

21 is mounted on the shaft and rotatable therewith and positioned for receiving  
22 fluid from the terminal ends of the fluid flow hoses tubes (84), and operable for  
23 throwing fluid that is placed thereon outwardly into engagement with the falling  
24 seed kernels on the wall of the drum.

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

29  
Z:\IP\Hent\White\Hudson\Revival\Continuing Application DRAFT.060106.wpd

1 13. At page 6 paragraph 29 the Examiner states that in claim 7, line 6, there is lack  
2 of antecedent basis for "the fluid line".

3 The Examiner is respectfully referred to the amendments to claims 5 and 6 re:  
4 "fluid flow tubes (84)".

5 Drawing Fig. 5, at reference character 74 illustrates exterior fitting (88), as  
6 disclosed in the Specification at page 7 and addressed in Response to page 6/paragraph 26  
7 of these Examiner rejections. Fig. 5, as submitted, disclosed reference character 86 to the  
8 structure connection to 88.

9 Fig. 5 has been amended to change 86 to 84.

10  
11 Claim 7 has been amended as follows:

12 and the rotary applicator is positioned between the upper bearing support and the  
13 upper bowl, and thereby positioned below the fluid flow tubes (84) line outlets for  
14 receiving thereon fluid introduced into the drum.

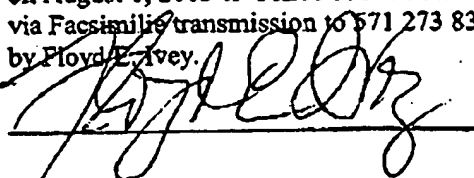
15  
16 The Examiner is respectfully requested to withdraw the rejection and to allow the  
17 claim as amended.

18  
19 14. At page 6 paragraph 30 the examiner states in claim 8, line 2, the phrase "each  
20 the spr4eader..." is unclear. Perhaps "each the spreader" should read -each of the  
21 spreader--.

22 Claim has been amended in accordance with the recommendation of the Examiner.  
23 The Examiner is requested to withdraw the rejection and to allow claim 8 as amended.

24  
25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



30

Z:\PClient\Whited\Petition\Revival\Continuing Application DRAFT.060106.vwpd



1 15. At page 6 paragraph 31 the examiner states in claim 8, line 2, there is lack of  
2 antecedent basis for "the...coaters".

3 The Examiner is referred, regarding bowls and coaters, to the Specification at page  
4 9 commencing at line 9 stating the following:

5 Mounted below the upper bowl 104, is an upper coater 112, which is generally  
6 similar to the spreader 90, but of different dimensions, being smaller in diameter  
7 than the latter. The coater includes a central hub 114, by which it is mounted on the  
8 shaft 68 for rotation therewith. It includes bottom plates 116, and vertical- radial  
9 blades 118 opening radially outwardly.

10

11 This upper coater 112, is positioned close to the upper bowl 104, and as the grain  
12 and fluid mixture flows down the bowl, it falls into the upper coater 112, and is  
13 again thrown out against the surrounding wall 46. this action produces a mixing  
14 effect, which is added to that of the spreader 90, and upper bowl 104.

15

16 Below the upper coater 112, is a central bowl 120, 10 identical in construction with  
17 the upper bowl 104, and mounted in a similar manner in the drum. This bowl  
18 receives the mixture from the wall 46, in the area radially outwardly from the  
19 upper coater 112 and the mixture then flows through this central bowl and down  
20 through its bottom opening 122.

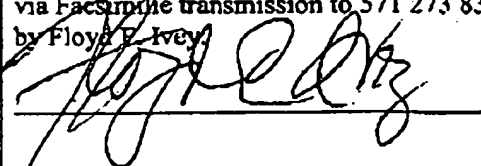
21

22 Below the central bowl 120, is a lower coater 124, which is identical in  
23 construction with the upper coater 112, and operable for throwing the mixture that  
24 falls into it from the central bowl 120, in outward direction against the surrounding

25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey

Application No. 09/638,017



31

Z:\PClient\White\Pat\Ivey\Continuing Application DRAFT.060106.wpd

1 wall. At this point the mixture as it engages the outer wall 20 continues to flow  
2 down through the drum.

3  
4 The Examiner is referred, re: wipers, to the Specification at page 10/line 18 to page  
5 12/line 13 stating:

6 To overcome this problem three pairs of wipers 128, 129, 130 are provided as  
7 shown in Fig. 14. In each pair, the wipers 20 are mutually identical, and arranged  
8 symmetrically, on a common diameter. The wipers in the different pairs differ in  
9 size and shape.

10  
11 Each wiper 128 includes a small flat steel mounting piece 132 welded to the  
12 applicator, on the under surface of the latter and at the periphery thereof, and a  
13 blade 133 extending down into the upper bowl. The blade is positioned at the  
14 periphery of the bowl. Its upper edge 135 is inclined upwardly in radial outward  
15 direction to a point 136 above the flange 110 of the bowl, engaging the wall of  
16 the drum at that point. Its radially outer edge 138 also engages the flange. The  
17 lower edge 139 of the blade engages the wall of the bowl down to a point 141, and  
18 its lower/inner edge 142 extends up to the mounting piece 132. The blade 133 is  
19 made of rubber belting material of known kind, 10 and accordingly is relatively  
20 stiff and will yield upon engaging an obstacle.

21  
22 The blades 133 are spaced apart, engaging the bowl only at the outer portion  
23 thereof, and leaving an empty space therebetween,

24  
25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

32  
Z:\VPC\lend\W\Used\Petition\Revival\Continuing Application DRAFT.060106.wpd

1 The wiper blades, in each pair, extend approximately threefourths of the slant  
2 height of the sloped bottom, from the upper edge of the latter, leaving the lower  
3 one- fourth open.

4  
5 The wipers, upon rotation with the shaft, wipe the bowl, and wipe the mixture and  
6 work it inwardly so as to position it 20 directly over the bottom outlet opening.  
7 This action forms a dense column at the center which as a mass moves  
8 downwardly, overcoming the tendency of the accumulation of the mixture on the  
9 wall of the bowl.

10  
11 In the case of the wipers 129, the mounting pieces 142 are secured to the upper  
12 coater 112 which is of lesser diameter than the applicator 100, and the blades are  
13 therefore radially longer than the blades in the wipers 128. The upper edged 143 is  
14 5 inclined upwardly and terminates at 145 at the upper edge of the flange 110.

15  
16 The wiper 130 includes a central hub 146 mounted on the lower end of the shaft 68  
17 to which mounting pieces 148 are welded.

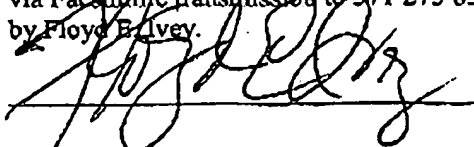
18  
19 The blades 149 engage the inner surface of the bottom bowl 54 at the upper part of  
20 the latter. Thus the three bowls are wiped of the mixture, producing faster and  
21 more efficient flow.

22  
23 Claim 8 is amended as follows:

24 at least one upper coater (112), is smaller in diameter than the spreader (90) and

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



33

Z:\IP\Client\Whitney\Petition Revival\Continuing Application.DRAFT.060106.wpd

1 has a central hub 114 by which the upper coater (112) is mounted on the shaft 68, for  
2 rotation therewith; the upper coater (112) having bottom plates (116) of conical shape, and  
3 vertical- radial blades (118) opening radially outwardly; the upper coater (112) is mounted  
4 below the upper bowl (104);

5 the upper bowl (104) fixedly mounted in the drum (44);  
6 at least one central bowl (120) fixedly mounted in the drum (44) below at least one  
7 upper coater (112), and tapering downwardly and having a bottom opening, and being  
8 otherwise imperforate and secured to the surrounding wall without space between itself  
9 and the surrounding wall, the at least one central bowl (120) receives the mixture from the  
10 wall 46, in the area radially outwardly from the upper coater 112 and the mixture then  
11 flows through this central bowl and down through its bottom opening 122;

12 at least one lower coater (124), is smaller in diameter than the spreader (90) and  
13 has a central hub which the lower coater (124), is mounted on the shaft (68), for rotation  
14 therewith; the lower coater (124) having bottom plates of conical shape, and vertical-  
15 radial blades opening radially outwardly; the lower coater (124) is mounted below the at  
16 least one central bowl (120);

17 the at least one lower coater (124) mounted on the shaft (68) above the hogback  
18 (76);

19 below the hogback (76) a conical bottom closure plate (54), with a central  
20 discharge opening (56), forming a bottom bowl (54); and

21 at least one pair of wipers (128, 129, 130) are in wiping contact with each of the  
22 said upper bowl (104), the at least one central bowl (120) and the bottom bowl (54); each  
23 pair of wipers at each of the upper bowl (104), the at least one central bowl (120) and the  
24 bottom bowl (54) are mutually identical, and arranged symmetrically, on a common

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

1 diameter, each of the at least one pair of wipers (128, 129, 130) are secured to the shaft  
2 (68) or the upper coater (112) for rotation with the rotation of the shaft (68);  
3 the wipers in the different pairs for the upper bowl (104), the at least one central  
4 bowl (120) and the bottom bowl (54) differ in size and shape to accommodate the shape of  
5 the respective upper bowl (104), the at least one central bowl (120) and the bottom bowl  
6 (54);  
7 for each wiper pair, each wiper (128, 129, 130) includes a mounting piece (132,  
8 142, 146) and a blade (133) extending down into the respective upper bowl (104), at least  
9 one central bowl (120) and bottom bowl (54); the blade (133) is positioned at the  
10 periphery of each of the respective bowls (104, 120 and 54); the blade (133) having an  
11 upper edge (135) which is inclined upwardly in radial outward direction to a point (136)  
12 above a flange (110) of the each of the respective upper bowl and at least one central bowl  
13 (104, 120) and to a point at the uppermost point of the bottom bowl (54) such that the  
14 blade (133) engages the wall of the drum;  
15 each blade (133) has a radial outer edge (138) which also engages the flange (136)  
16 with wiping contact; a lower edge (139) of the blade (133) engages the wall of the  
17 respective bowl (104, 120, 54) down to a point (141) proximal the respective bowl bottom  
18 or discharge opening (108, 122, 56); each of the respective blades (133) has a lower/inner  
19 edge (142) which extends up to the mounting piece (132);  
20 the blade (133) is made of relatively stiff yet flexible material (10) which will  
21 yield upon engaging an obstacle;  
22 the blades (133) are spaced apart, engaging the bowl only at the outer portion  
23 thereof, and leaving an empty space therebetween.  
24 the blades (133), in each pair, extend approximately threefourths of a slant height  
25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

1 of the sloped bottom of each of the respective bowls (104, 120, 54), from an upper edge of  
2 the each of the respective bowls (104, 120, 54) leaving the lower one- fourth of the slant  
3 height of each of the sloped bottoms of each of the respective bowls (104, 120, 54) open;

4 the wipers (128, 129, 130), upon rotation with the shaft (68), wipe the respective  
5 bowls (104, 120, 54) and wipe the mixture and work it inwardly so as to position the  
6 mixture directly over the bottom or discharge opening (108, 122, 56) of each of the  
7 respective bowls (104, 120, 54);

8 each of the spreader, applicator, and upper coater[s] and the at least one lower  
9 coater, includes a bottom plate extending substantially its full area, and vertical blades  
10 extending upwardly from the bottom plate, and

11 the spreader (90) bottom plate (92) and blades (94) have a central opening (96), for  
12 receiving the upper bearing 70;

13 the upper coater (112), is positioned close to the upper bowl (104), and as the grain  
14 and fluid mixture flows down the upper bowl (104), it falls into the upper coater (112),  
15 and is again thrown out against the surrounding wall (46), this action produces a mixing  
16 effect, which is added to that of the spreader (90), and upper bowl (104);

17 the at least one central bowl (120) receives the mixture from the wall (46), in the  
18 area radially outwardly from the upper coater (112) and the mixture then flows through the  
19 at least one central bowl (120) and down through its bottom opening (122);

20 the lower coater (124) is operable for throwing the mixture that falls into it from  
21 the at least one central bowl (120), in outward direction against the surrounding wall (46).

22  
23 The Examiner is requested to withdraw the rejection at paragraph 31 and to allow  
24 claim 8 as amended.

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

1 16. At page 6 paragraph 32 the Examiner states that in claim 8, line 4, the phrase  
2 "from bottom plate" should read -from the bottom plate-. The amendment has been  
3 made. Please refer to the above paragraph 15 addressing the rejection at paragraph 32.  
4 Consequently the Examiner is requested to withdraw the rejection and to allow the claim.

5  
6 17. At page 7 paragraph 33 the Examiner states that Claims 10 and 11 are  
7 rendered indefinite by the word "similarly".

8 Claim 10 has been amended as follows:

9 a center bowl substantially identical with the upper bowl below the upper coater,  
10 and fixedly mounted in the drum substantially identically to the mounting of  
11 similarly to the upper bowl.

12  
13 Claim 11 has been amended as follows:

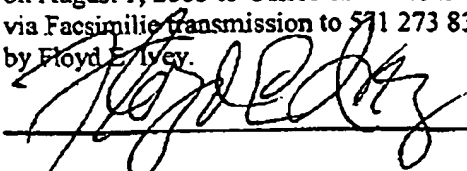
14 a lower rotary coater substantially identical with the upper rotary coater and  
15 mounted below the lower central bowl and mounted substantially identically to the  
16 mounting of similarly to the upper rotary coater, and

17  
18 The Examiner is requested to withdraw the rejections of claims 10 and 11 and to  
19 allow the claims as amended.

20  
21 18. At page 7 paragraph 34 the Examiner states that in claim 11, line 3, there is  
22 lack of antecedent basis for "the lower bowl" and that perhaps "the lower bowl" should  
23 read - the central bowl - especially considering that recitation of "a lower rotary  
24 coater...mounted below the lower bowl" contradicts the drawings and the remainder of the

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

  
37  
Z:\PClient\White\Petition Revival\Continuing Application.DRAFT.060106.wpd

1 specification (given that an upper and central bowl has been previously recited) and that  
2 "no coater below the lower bowl is shown in the drawings of discussed in the  
3 specification, except in this claim."

4 Claim 11 has been amended in accordance with the suggestion of the Examiner.  
5 Please refer to the amendment addressed at the Response to paragraph 34. The Examiner  
6 is requested to withdraw the rejection and to allow the claim as amended.

7  
8 19. At page 7 paragraph 35 the Examiner states that in claim 12, the phrase "below  
9 all of the above instrumentalities and structures" and that it is unclear if "above" is meant  
10 in a physical sense referring to the apparatus or in a linguistic sense referring to the written  
11 claims and that it is unclear what the scope of "all the above instrumentalities and  
12 structures" is.

13 Claim 12 has been amended as follows:

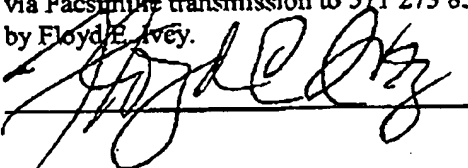
14 a hogback adjacent to the lower end of the drum and below ~~all of the above~~  
15 ~~instrumentalities and structures~~ the central bowl,  
16 a conical bottom closure plate (54), with a central discharge opening (56), forming  
17 a bottom bowl (54) below the hogback (76); and

18  
19 The Examiner is respectfully requested to withdraw the rejection and to allow the  
20 claim as amended.

21  
22 20. At page 7 paragraph 36 the examiner states that claim 13 is unclear and that in  
23 parent claim 1, "power means for rotating the shaft surface" are recited. Further that in  
24 line 2 of claim 13, "power means" are again recited, and in line 3 of claim 13, "power

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



38

Z:\PC\client\White\Petition Revival\Continuing Application.DRAFT.060106.wpd



1 transmitting means' are recited. And finally, in lines 3-4 of claim 13, "the power means"  
2 is recited. To which of the three previously recited power means does "the power means"  
3 refer?

4 Claim 1 has been amended as follows:  
5 the seed treater including power transmitting means operably connecting power  
6 means for rotating the shaft (68) surface.

7 Thus the power means is an electric motor or other such means. The power  
8 transmitting means is a belt or chain drive or a gear relationship. The Examiner is  
9 requested to withdraw the rejection with this Responsive amendment of claim 1 and to  
10 allow claim 13 and 1 as amended.

11  
12 21. At page 7 paragraph 37 the Examiner states that in claim 13, line 5, it is  
13 unclear what "its" refers to, the "hogback" or the "power transmitting means"?

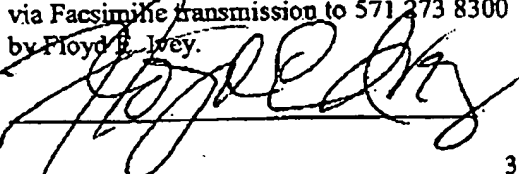
14 Claim 13 has been amended as follows:  
15 power transmitting means operably connecting the power means and the shaft and  
16 extending into the drum and underlying the hog back ~~throughout its extent to the~~  
17 ~~shaft; the power transmitting means and thereby shielded by the hogback from~~  
18 grain falling through the drum.

19  
20 The Examiner is requested to withdraw the rejection and to allow the claim.

21  
22 22. At page 8 paragraph 38 the Examiner states that in claim 14, it is unclear  
23 whether "the bottom opening" refers to the bottom opening recited in line 3 of claim 1 or  
24 the bottom opening recited in line 10 of claim 1.

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



39

Z:\Client\White\Portion Revival\Continuing Application.DRAFT.060106.wpd

1 Claim 14 has been cancelled.

2  
3 23. At page 8 paragraph 39 and 40 the Examiner rejects claim 14. Claim 14 has  
4 been cancelled.

5  
6 24. At page 8 paragraph 41 the Examiner states that claim 17 is rendered indefinite  
7 by the limitation "conduit means", because "conduit" is not a function.

8 Claim 17 has been amended as follows:

9 fluid flow means (84) conduit means leading from the exterior into the interior of  
10 the drum for conducting liquid chemicals into the drum for mixing with the grains  
11 in the drum.

12  
13 The Examiner is requested to withdraw the rejection and allow claim 17 as  
14 amended.

15  
16 **VII. CLAIM REJECTIONS 35 USC 102**

17 At paragraphs 42-44 the Examiner sets forth Claim Rejections under 35 USC 102.  
18 **A. Rejections under 35 USC 102 under Russell:** At paragraph 43 the Examiner rejects  
19 claims 1-2, 6, 9-12 and 14-17 under 35 USC 102(b) as being anticipated by Russell, US  
20 2,204,029.

21 Your applicant has discussed the structure of Russell relative to the structure of  
22 your present applicant's invention and has both distinguished the structures and or  
23 amended the claims so that the structures are different. A rejection for anticipation under  
24 section 102 requires that each and every limitation of the claimed invention be disclosed in

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

1 a single prior art reference. The Examiner is respectfully referred to the following  
2 subsection C. Law regarding 35 U.S.C. 102.

3  
4 **Regarding claim 1:** The Examiner states in part, at page 8/paragraph that  
5 "...Russell('029) discloses...a spreader (20, the uppermost one) mounted on the shaft  
6 adjacent the top of the drum..." The Examiner's attention is respectfully drawn to the  
7 "spreader 20" of Russell ('029) where it is seen that the "spreader 20", described in  
8 Russell Column 2/lines 35-44, are

9 "...fixed and rotatable sweeps or blades 19 and 20 each being arcuately curved  
10 from end to end and provided with scraping edges for coaction with the plates or  
11 discs 15 and 16, it being understood that the blades or sweeps have wiping contact  
12 with said plates or discs, the fixed blades or sweeps coacting with the rotatable  
13 discs or plates while the rotatable blades or sweeps coact with the fixed plates or  
14 discs."

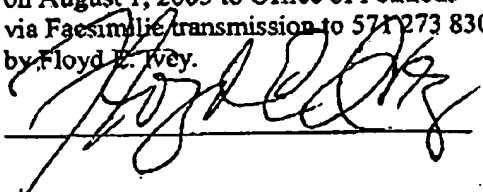
15  
16 Your applicant respectfully observes that the "spreader 20" of Russell is quite  
17 unlike the "spreader 90" of the present invention. The "spreader 20" of Russell comprises  
18 blades 19 and 20 which have wiping contact with plates 15 and 16.

19 The Examiner will appreciate the distinctly different structure of the "spreader 90"  
20 of the present invention. There, as described at the present Application Page 7/lines 18-24  
21 as:

22 Mounted on the upper end of the shaft 68 above the bearing support 74 is a  
23 rotary spreader 90 (Fig. 5), also shown in Fig. 3. This spreader rotates with the  
24 shaft and includes a bottom plate 92, of conical shape, and vertical blades 94

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

  
41  
Z:\PC\Hent\Whited\Pat\Revival\Continuing Application.DRAFT.060106.wpd

1 opening radially outwardly, following the slope of the bottom plates, i.e.,  
2 downwardly. The bottom plate and blades have a central opening 96, for receiving  
3 the upper bearing 70.

4  
5 The Russell "spreader 20" has no bottom but rather coacts with plates or discs 15,  
6 16. The "spreader 90" of the present invention has a conically shaped bottom plate 92 and  
7 vertical blades 94 opening radially outwardly, following the slope of the bottom plates,  
8 i.e., downwardly. The bottom plate and blades have a central opening 96, for receiving the  
9 upper bearing 70.

10 Your applicant has amended Claim 1 to include the limitation "the spreader (90)  
11 having a bottom (92) which is of conical shape." Your applicant respectfully urges the  
12 Examiner to find that this amendment distinguishes the present invention and claim 1 from  
13 Russell and requests the Examiner to withdraw the rejections to claim 1.

14  
15 Regarding Claim 2: At page 9 the Examiner states "Regarding claim 2, the drum  
16 has a top cover (11) in which the top opening is formed..." The Examiner is respectfully  
17 directed to Russell re: element (11) which is addressed at Russell column 1/line 48 as

18 "...a spider 11 detachably secured onto the walls of the drum by stud bolts 12..."

19 Spider (11) of Russell is depicted at Fig. 2 as a four legged structure. The spider  
20 (11) of Russell is distinguished from claim 2 of the present application re: "a top cover in  
21 which the top opening is formed" by reference to Fig. 4 and 5. There the Examiner will  
22 find "top closure plate 48 shown in Fig. 4 is also shown in Fig. 5, this plate having a  
23 radially extended peripheral flat flange 64, detachably secured to the flange 60, and welded  
24 to the tube 52 around the feed hole 50. (Specification page 6/lines 15-18).

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 574 273 8300  
by Floyd B. Ivey.

Application No. 09/638,017

42  
Z:\IP\Office\Whited\Petition Revival\Continuing Application DRAFT.060106.wpd

1 Claim 2 has been amended to state "...the drum has a top closure plate (48) cover  
2 in..." and with each reference to "top cover" amended to "top closure plate (48)" in Claim

3 2.

4 Claim 2 has been further amended to state:

5 and

6 a downwardly directed cone shaped conical bottom closure plate (54), with a  
7 central discharge opening (56) forming the bottom opening and forming a bottom  
8 bowl, the bottom closure plate (54) secured to the surrounding wall, the bottom  
9 bowl coaxially positioned with the drum and surrounding imperforate element  
10 positioned for receiving the grain falling through the drum.

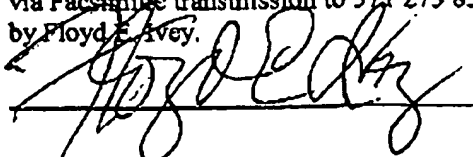
11  
12 Your applicant respectfully observes the structural differences between the "spider  
13 (11)" of Russell and the "top closure plate (48)" of the present invention. Your applicant  
14 respectfully contends that Russell does not anticipate the present invention and requests  
15 the Examiner to withdraw the rejection to claim 2.

16  
17 The Examiner, re: Claim 2, states that Russell discloses that "...the drum includes a  
18 flange unit (6) on the top cover having a central opening co-axial with the top opening of  
19 the drum..." Your applicant respectfully notes that numerical identifier (6) of Russell is  
20 found at column 1/line 38 stating "...equipped with barrels 6 through which extend...".  
21 The Examiner may have intended to reference numerical identifier (26) of Russell which,  
22 from Figure 2 of Russell has an appearance of a flange. However, in Russell at column  
23 3/line 26 there is stated "An outer jacket 26 is provided..."

24 Thus your applicant respectfully urges the Examiner to find that there is no "flange

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



43

Z:\PC\Chen\White\Petition\Rev\Continuing Application.DRAFT.060106.wpd

unit" depicted or claimed in Russell, contends that Russell does not anticipate the present invention re: a "flange unit" and requests the Examiner to withdraw the rejection of claim2.

Regarding claim 3: The Examiner, at page 9, states that "Regarding claim 3, the treater includes upper and lower first bearing means (9,10) for supporting the shaft, second means (11) for supporting the bearing means within the drum, the second supporting means being operable for detachably mounting the second supporting means on the surrounding wall..." It is respectfully noted that your applicant does not find a "second means (11)" in Russell but recalls "spider 11" from Russell column 1/line 48.

Nevertheless, claim 3 has been amended to add:

the spreader (90) bottom plate (92) having vertical blades (94) opening radially outwardly following the downward slope of the bottom plate (92).

And, claim 8 has been amended as follows:

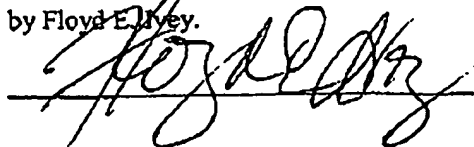
and the spreader (90) bottom plate (92) and blades (94) have a central opening (96), for receiving the upper bearing 70.

Having amended claim 3 and 8 your applicant respectfully requests the Examiner to withdraw the rejection and to allow the claims as amended.

Regarding claim 6: At page 9 the Examiner states "Regarding claim 6, the treater includes a rotary applicator (second blades 20 from top in Fig. 1) between the spreader (uppermost blades 20 in Fig. 1) and the upper bowl (second bowl 16 from top in Fig. 1, the

Certificate of facsimile Official Filing  
on August 1, 2005 to Office of Petitions  
via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



44

Z:\PC\Hem\White\Petition\Revive\Continuing Application.DRAFT.060106.wpd

1 applicator is mounted on the shaft and is rotatable therewith (see Fig. 1; col. 2, lines 35-  
2 36).

3 Your applicant again respectfully distinguishes, structurally, the structure of  
4 Russell identified as sweeps or blades 19 and 20 (Russell Col. 2/line 36) which is  
5 addressed additionally in your applicants response to the Examiner's comments re: claim 1  
6 in this section. The "sweeps or blades 19 and 20" of Russell do not have the structure of  
7 the "applicator" of claim 6 of this applicants application. The Examiner will find the  
8 "applicator" of the present invention described at the specification page 8/lines 1-5 as  
9 follows:

10 Mounted on the shaft 68, below the bearing support 74, is an applicator 100 (Figs.  
11 9 and 10). This applicator includes a central hub 102, secured to the shaft, and a  
12 bottom plate 101, and vertical radial blades 106. This applicator is of lesser depth  
13 than the spreader 90.

14  
15 Claim 6 has been amended as follows:

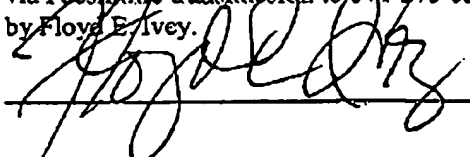
16  
17 the applicator (100) has a central hub (102) secured to the shaft, and a bottom plate  
18 (101) with vertical radial blades (106); the applicator (100) is of lesser depth than the  
19 spreader (90), and

20  
21 Your applicant respectfully requests the Examiner to withdraw the rejection to  
22 claim 6 and to allow the claim.

23  
24 Regarding claim 9: At page 9 the Examiner states "Regarding claim 9, the treatr

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



45

Z:\PC\lent\White\Petition Revival\Continuing Application.DRAFT.060106.wpd

1 includes an upper rotary coater (third blades 20 from top in Fig. 1) below the upper bowl  
2 and secured to the shaft. The Examiner's attention is drawn to the Specification page 8  
3 commencing at line 20 to page 9 line 2 where the coater's structure is described as  
4 follows:

5 Mounted below the upper bowl 104, is an upper coater 112, which is generally  
6 similar to the spreader 90, but of different dimensions, being smaller in diameter  
7 than the latter. The coater includes a central hub 114, by which it is mounted on the  
8 shaft 68 for rotation therewith. It includes bottom plates 116, and vertical- radial  
9 blades 118 opening radially outwardly.

10

11

12 Claim 9 has been amended to depend from claim 3 and further as follows:

13

14 , and

15 the upper coater (112) is smaller in diameter than the spreader (90) and has a  
16 central hub 114 by which the upper coater (112) is mounted on the shaft 68 for  
17 rotation therewith; the upper coater (112) having bottom plates (116) of conical  
18 shape, and vertical- radial blades (118) opening radially outwardly.

19

20

21 Having amended claim 9, your applicant respectfully requests the Examiner to  
22 withdraw the rejection and to allow the claim.

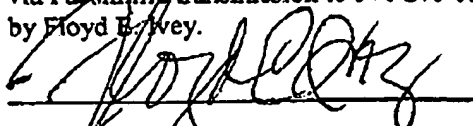
23

24 Regarding claim 10: At page 9 the Examiner states "Regarding claim 10, the

25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



46

Z:\UPClient\Whited\Section Revival\Continuing Application\Draft.060106.wpd



1 treater includes a central bowl (third bowl 16 from top in Fig. 1) substantially identical  
2 with the upper bowl below the upper coater, and mounted in the drum similarly to the  
3 upper bowl (see fig. 1).

4 Claim 9 has been amended re: the structure of the upper coater (112). Claim 10  
5 depends from claim 9. Your applicant respectfully requests the Examiner, in light of the  
6 amendment of claim 9, to withdraw the rejection of claim 10 and to allow the claim.

7  
8 Regarding claim 11: At page 9-10 the Examiner states "Regarding claim 11, the  
9 treater includes a lower rotary coater (bottom blade 20 in Fig. 1) substantially identical  
10 with the upper rotary coater and mounted below the central bowl (see discussion of  
11 claim 11 with regard to section 112 above) and mounted similarly to the upper rotary  
12 coater."

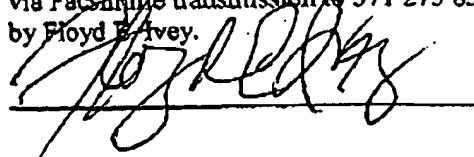
13 The matter of the upper rotary coater (112) has been addressed in response to the  
14 rejection of claim 9. Claim 9 has been amended to depend from claim 3 and further to add  
15 structure to the upper coater (112). Claim 11 depends from claim 10 which depends from  
16 claim 9. Regarding the lower rotary coater your applicant respectfully refers to the  
17 Specification page 9/lines 15-20 which state the following:

18 Below the central bowl 120, is a lower coater 124, which is identical in  
19 construction with the upper coater 112, and operable for throwing the mixture that  
20 falls into it from the central bowl 120, in outward direction against the surrounding  
21 wall. At this point the mixture as it engages the outer wall 20 continues to flow  
22 down through the drum.

23  
24 Claim 11 is amended to provide structure to the lower coater (124) as was provided

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



47

Z:\P\Clon\W\Hind\Petition\Revival\Continuing Application\_DRAFT.060106.wpd

1 in the amendment of claim 9 regarding the upper rotary coater (112) as follows:

2 and

3 the lower rotary coater (124), is smaller in diameter than the spreader (90) and has  
4 a central hub 114 by which the lower rotary coater (124) is mounted on the shaft 68  
5 for rotation therewith; the lower coater (124) having bottom plates (116) of conical  
6 shape, and vertical- radial blades (118) opening radially outwardly.

7  
8 Having amended claim 11, your applicant respectfully requests the Examiner to  
9 withdraw the rejection of claim 11 and to allow the claim as amended.

10  
11 Regarding Claim 12: At page 10 the Examiner states "Regarding claim 12, the  
12 treater includes a hogback (19, 21, 23, 24, 25) adjacent the lower end of the drum and  
13 below all the above instrumentalities and structures, the hogback being constituted by a  
14 rigid elongated piece extending diametrically across the drum and secured at its end to the  
15 surrounding wall, and lower bearing means (9) mounted on and under the hogback and  
16 supporting the shaft."

17 The Examiner's attention is drawn to the nature or structure of a "hogback" as an  
18 inverted "V" structure (Webster's New Collegiate Dictionary, Second Edition) being "any  
19 ridge with a sharp summit and steeply sloping sides. Your applicant does not find a  
20 similar "ridge" or inverted "V" structure found in Russell. The Examiner will find in the  
21 Specification page 9/line 21 to page 10/line 2 the description of the structure of the  
22 hogback as follows:

23 The lower bearing support 76, identified above, is constructed as a  
24 hogback. Figs. 11 and 12 show its detail construction. It includes a main

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

48  
Z:\PC\Hard\Whited\Petition\Revival\Continuing Application.DRAFT.060106.wpd

1 structural member 125, made up of a pair of plates 126, disposed at an  
2 angle to each other and together extending diametrically across the drum. It  
3 is disposed with the apex of the angle upwardly.

4  
5 Claim 12 has been amended as follows:

6  
7 the hogback being constituted by a rigid elongated piece 5 extending diametrically  
8 across the drum and secured at its ends to the surrounding wall includes a main  
9 structural member 125, made up of a pair of plates 126, disposed at an angle to  
10 each other and is disposed with the apex of the angle upwardly, and

11  
12 Having amended claim 12 and setting forth structural distinctions your applicant  
13 respectfully requests the Examiner to withdraw the rejection of claim 12 and to allow the  
14 claim as amended.

15  
16 Regarding claim 14: At page 10 the Examiner states "Regarding claim 14, the  
17 drum includes a bottom closure element (8) of downwardly directed cone shape, forming a  
18 bottom bowl, secured to the surrounding wall, the bottom bowl includes the bottom  
19 opening positioned coaxially with the drum, and surrounding imperforate element."

20 Claim 14 has been cancelled. Claim 2 has been further amended as follows:

21 and

22 a downwardly directed cone shaped conical bottom closure plate (54), with a  
23 central discharge opening (56) forming the bottom opening and forming a bottom  
24 bowl, the bottom closure plate (54) secured to the surrounding wall, the bottom

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

bowl coaxially positioned with the drum and surrounding imperforate element positioned for receiving the grain falling through the drum.

Regarding claim 15: At page 10 the Examiner states "Regarding claim 15, the treater includes in addition to the upper bowl, a central bowl (third bowl 16 from top in Fig. 1) and a bottom bowl (bottommost bowl 16 in Fig. 1) all concentric with the axis and wiper (20) secured to the shaft and extending into the respective bowls for wiping the floors of the bowls."

Claim 1 has been amended. Claim 15 depends from Claim 1. Your applicant respectfully requests the Examiner to withdraw the rejection of claim 15 in light of the amendment of claim 1.

Regarding claim 16: At page 10 the Examiner states "Regarding claim 16, Russell ('029) discloses a treater comprising, a cylindrical drum (5), having a top opening and a bottom opening (see fig. 1); the drum including means for mount (see fig. 1); the drum including means for mixing (13, 14, 20); the apparatus including power means (see col. 1, lines 53-55)."

Claim 16 has been amended to add the following:

a spreader mounted on the shaft adjacent the top of the drum, and adapted to receive seed flowing downwardly through the top opening, and operable for throwing the seed outwardly into engagement with the surrounding wall, the spreader (90) having a bottom (92) having a conical shape, the spreader (90) bottom plate (92) having vertical blades (94) opening radially

Certificate of facsimile Official Filing  
on August 1, 2005 to Office of Petitions  
via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

50

Z:\PClient\Whited\Petition\Revival\Continuing Application.DRAFT.060106.wpd

Regarding Claim 1: At page 10-11 the Examiner states "Regarding claim 1, Shiner ('696) discloses a treater comprising, a drum (1), having a surrounding wall and a top opening and a bottom opening (see fig. 1); a rotatable shaft (5) mounted in the drum on a vertical axis; a spreader (23, the uppermost one) mounted on the shaft adjacent the top of the drum; and upper bowl (18, for example the third one from the top in Fig. (1) below the

Certificate of facsimile Official Filing  
on August 1, 2005 to Office of Petitions  
via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

51

Z:\PClient\Whited\Petition\Revival\Continuing Application.DRAFT.060106.wpd

1 spreader, and tapering downwardly and having a bottom opening (22) and being otherwise  
2 imperforate and secured to the surrounding wall without space between itself and the  
3 surrounding wall and all material thrown from the spreader will flow into the upper bowl  
4 and material will flow through the bottom opening in the upper bowl and through the  
5 bottom opening of the drum (see fig. 1); and the treater includes power means (11, 12) for  
6 rotating the shaft."

7 The Examiner's attention is respectfully directed to the spreader (90) of the present  
8 invention seen at Fig. 1 and Fig. 14 and discussed in this response in the section  
9 designated "CLAIM REJECTIONS 35 USC 102", A. Rejections under 35 USC 102  
10 under Russell: and in detail at the entry thereunder "Regarding claim 1: where the  
11 Examiner finds reference to the Specification of the present invention in describing the  
12 structure of the present spreader as follows:

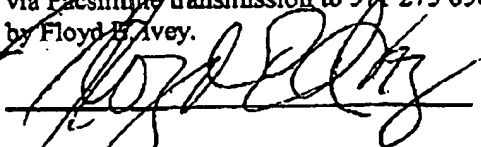
13 In the present Application Page 7/lines 18-24 the spreader (90) is described as:

14 Mounted on the upper end of the shaft 68 above the bearing support 74 is a  
15 rotary spreader 90 (Fig. 5), also shown in Fig. 3. This spreader rotates with the  
16 shaft and includes a bottom plate 92, of conical shape, and vertical blades 94  
17 opening radially outwardly, following the slope of the bottom plates, i.e.,  
18 downwardly. The bottom plate and blades have a central opening 96, for receiving  
19 the upper bearing 70.

20  
21 The Examiner is drawn to the structure of Shiner identified by the Examiner as a  
22 "spreader (23)" which illustrates, in Shiner Fig. 1 and in detail at Shiner Fig. 4 parallel  
23 perforated plates (23, 24) having a hub (25) received by a shaft which is apparently  
24 designated (5). The spreader (90) of the present invention is dissimilar to that of Shiner.

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd B. Ivey.

Application No. 09/638,017



52

Z:\PCL\ent\W\l\of\Petition\Revival\Continuing Application.DRAFT.060106.wpd

1 Claim 1 has been amended to recite structure from the present spreader (90) as follows:  
2 a spreader mounted on the shaft adjacent the top of the drum, and adapted to  
3 receive seed flowing downwardly through the top opening, and operable for  
4 throwing the seed outwardly into engagement with the surrounding wall, the  
5 spreader (90) having a bottom (92) which is of conical shape.  
6

7 Having amended claim 1 to add structure distinct from that of Shiner your  
8 applicant respectfully requests the Examiner to withdraw the rejection under Shiner and to  
9 allow Claim 1 as amended and all claims depending from Claim 1.  
10

11 Regarding claim 2: The Examiner, at page 11 states "Regarding claim 2, the drum  
12 has a top cover (see fig. 1) in which the top opening is formed, and the drum includes a  
13 flange unit (F') on the top cover having a central opening co-axial with the top opening of  
14 the drum and a flange element spaced axially from the top cover and extending  
15 transversely from the axis, for detachably securing it to and over head supporting structure  
16 (see fig. 1).

17 The Examiner is directed to the Response to the 35 USC 102(b) rejections under  
18 Russell at the section designated "Regarding claim 2." There the amendment to Claim 2  
19 is found to include:

20 and  
21 a downwardly directed cone shaped conical bottom closure plate (54), with a  
22 central discharge opening (56) forming the bottom opening and forming a bottom  
23 bowl, the bottom closure plate (54) secured to the surrounding wall, the bottom  
24 bowl coaxially positioned with the drum and surrounding imperforate element  
25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

53  
Z:\D\Clients\Whitford\Petitions\Continuing Application.DRAFT.060106.wpd

1 positioned for receiving the grain falling through the drum.

2  
3 Having amended Claim 2 your applicant respectfully requests the Examiner to  
4 withdraw the rejection under Shiner and to allow Claim 2 as amended and all claims  
5 depending therefrom.

6  
7 Regarding claim 3: The Examiner states at page 11 "Regarding claim 3, the  
8 treater includes upper and lower first bearing means (7,6) for supporting the shaft, second  
9 means for supporting the bearing means within the drum, the second supporting means  
10 being operable for detachably mounting the second supporting means on the surrounding  
11 wall (see fig. 1)."

12 Claim 3 has been amended as follows:

13 the spreader (90) bottom plate (92) having vertical blades (94) opening radially  
14 outwardly following the downward slope of the bottom plate (92).

15 And, claim 8 has been amended as follows:

16 and the spreader (90) bottom plate (92) and blades (94) have a central opening  
17 (96), for receiving the upper bearing 70.

18  
19 The Examiner is further referenced to that section regarding the present Response  
20 to the 35 USC 102(b) rejections under Russell at the portion of the Response designated  
21 "Regarding claim 3."

22 Having amended Claim 3 the applicant respectfully requests the Examiner to  
23 withdraw the rejection of Claim 3 under Shiner and to all the claim and all claims  
24 depending therefrom.

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

54

Z:\PC\Ilem\Whales\Petition\Revival\Continuing Application.DRAFT.050106.wpd

1       Regarding claim 6: The Examiner states at page 11 "Regarding claim 6, the  
2 treater includes a rotary applicator (second 23 from top in Fig. 1) between the spreader  
3 (uppermost 23 in Fig. 1) and the upper bowl (third bowl 18 from top in Fig. 1), the  
4 applicator is mounted on the shaft and is rotatable therewith page. 2, lines 24-26).

5       Claim 6 depends from claim 1 which has been amended. Claim 6 has been  
6 amended, as discussed in the section Re: Russell 35 USC 102(b) rejections, as follows:

7       (100) has a central hub (102) secured to the shaft, and a bottom plate (101) with  
8       vertical radial blades (106); the applicator (100) is of lesser depth than the spreader  
9       (90), and

10  
11       Your applicant notes that there is no similar structure described in Shiner.  
12 Accordingly, your applicant respectfully requests the Examiner to withdraw the rejection  
13 of Claim 6 and to allow the claim and claims depending therefrom as amended.

14  
15       Regarding claim 9: The Examiner states, at page 12, "Regarding claim 9, the  
16 treater includes an upper rotary coater (third 23 from top in Fig. 1) below the upper bowl  
17 and secured to the shaft."

18       The Examiner is referred to the section under Remarks re: Russell and "Regarding  
19 claim 9: " and the amendment of Claim 9 to depend from claim 3 and further to include  
20 the following:

21       and  
22       an upper coater (112), is smaller in diameter than the spreader (90) and has a  
23       central hub 114 by which the upper coater (112) is mounted on the shaft 68 for  
24       rotation therewith; the upper coater (112) having bottom plates (116), and vertical-

25  
26       Certificate of facsimile Official Filing  
27       on August 1, 2006 to Office of Petitions  
28       via Facsimile transmission to 571 273 8300  
      by Floyd E. Ivey.

Application No. 09/638,017

55

Z:\UP\Client\Whited\Petition\Revival\Continuing Application\DRAFT.060106.cwpd



1 radial blades (118) opening radially outwardly.

2  
3 In light of said amendment of claim 9, your applicant respectfully requests the  
4 Examiner to withdraw the rejection of claim 9 under Shiner and to allow the claim and all  
5 claims depending therefrom.

6  
7 Regarding claim 10: At page 12 the Examiner states "Regarding claim 10, the  
8 treater includes a central bowl (fourth bowl 18 from top in Fig. 1) substantially identical  
9 with the upper bowl below the upper coater, and mounted in the drum similarly to the  
10 upper bowl (see fig. 1)."

11 The Examiner is respectfully referred to the above Response under Shiner to Claim  
12 9. Claim 10 depends from claim 9. Claim 9 has been amended. Your applicant  
13 respectfully requests the Examiner to withdraw the rejection of claim 10, as amended, and  
14 to allow the claim and all claims depending therefrom.

15  
16 Regarding claim 11: At page 12 the Examiner states that "Regarding claim 11, the  
17 treater includes a lower rotary coater (fourth 23 in Fig. 1) substantially identical with the  
18 upper rotary coater and mounted below the central bowl (see discussion of claim 11 with  
19 regard to section 112 above) and mounted similarly to the upper rotary coater."

20 The Examiner is respectfully referred to the discussion of the rejection of claim 11  
21 under Russell and the attendant amendment of claim 11. The Examiner will appreciate the  
22 structural distinction between the "lower rotary coater (fourth 23 in Fig. 1)" of Shiner from  
23 the "lower rotary coater (112 or 124)" of the present invention. In light of the amendments  
24 to claim 11, your applicant respectfully requests the Examiner to withdraw the rejection of  
25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd B. Ivey.

Application No. 09/638,017

56

Z:\Client\White\Petition Revival\Continuing Application DRAFT.060106.wpd

1 claim 11 and to allow the claim as amended and all claims depending therefrom.

2

3       **Regarding claim 12:** At page 12 the Examiner states "Regarding claim 12, the  
4 treater includes a hogback adjacent the lower end of the drum and below all the above  
5 instrumentalities and structures, the hogback being constituted of a rigid elongated piece  
6 extending diametrically across the drum and secured at its end to the surrounding wall, and  
7 lower bearing means (8) mounted on and under the hogback and supporting the shaft (see  
8 fig. 1)."

9       Your applicant observes bearings (9) and (6) in fig. 1 of Shiner with the lower  
10 bearing appearing to be (6). Your applicant has addressed the "hogback" in the Response  
11 to the 35 USC 102(b) rejection under Russell and respectfully directs the Examiner to that  
12 discussion and the attendant amendment of claim 12.

13       In light of the amendment to claim 12, your applicant respectfully requests the  
14 Examiner to withdraw the rejection of claim 12 and to allow the claim and all claims  
15 depending therefrom.

16

17       **Regarding claim 14:** At page 12 the Examiner states that "Regarding claim 14, the  
18 drum includes a bottom closure element (bottommost bowl 18 in fig. 1) of downwardly  
19 directed cone shape, forming a bottom bowl, secured to the surrounding wall, the bottom  
20 bowl includes the bottom opening (22) positioned coaxially with the drum, and  
21 surrounding imperforate element "

22       Claim 14 has been cancelled.

23

24       **Regarding claim 16:** at Page 12, the Examiner states that "Regarding claim 16,

25

26       Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017



57

Z:\UP\lien\Whited\Petition\Revival\Continuing Application.DRAFT.060106.wpd

1 Shiner ('696) discloses a treater comprising a cylindrical drum (1) having top and bottom  
2 openings (see fig. 1); the drum including means for mounting (F, F'), the drum including  
3 means for mixing (5, 3, 25); the apparatus including power means (11,12)."

4 Claim 16 has been amended. The Examiner is referred to the discussion of Claim  
5 16 in relation to the 35 USC 102(b) rejection under Russell. Claim 16 has been amended  
6 as follows:

7 a spreader (90) mounted on the shaft adjacent the top of the drum, and adapted to  
8 receive seed flowing downwardly through the top opening, and operable for  
9 throwing the seed outwardly into engagement with the surrounding wall, the  
10 spreader (90) having a bottom (92) having a conceal shape.  
11

12 With the amendment of claim 16, your applicant respectfully requests the  
13 Examiner to withdraw the rejection of claim 16 and all claims depending therefrom.  
14

15 Regarding claim 17: At page 12 the Examiner states "Regarding claim 17, the  
16 apparatus includes conduit means (17)."

17 Claim 17 depends from Claim 16. Claim 16 has been amended. Your applicant  
18 respectfully requests that the rejection be withdrawn and the claim allowed.  
19

20 C. Law regarding 35 U.S.C. 102.

21 A rejection for anticipation under section 102 requires that each and every  
22 limitation of the claimed invention be disclosed in a single prior art reference. *In re*  
23 *Aventis Pharmaceuticals, Inc.* 372 F.Supp.2d 430, 434-35 (D.N.J.,2005); *In Re Paulsen*,  
24 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); For a prior art reference  
25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

1 to anticipate in terms of 35 U.S.C. S 102, every element of the claimed invention must be  
2 identically shown in a single reference. The elements must be arranged as in the claim  
3 under review. (*In Re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990).  
4 Prior art anticipates an invention ... if a single prior art reference contains each and every  
5 element of the patent at issue, operating in the same fashion to perform the identical  
6 function as the patented product. "Thus, any degree of physical difference between the  
7 patented product and the prior art, NO MATTER HOW SLIGHT, defeats the claim of  
8 anticipation." (*American Permahedge, Inc. v. Barcana, Inc.*, 857 F. Supp. 308, 32  
9 USPQ2d 1801, 1807-08 (S.D. N.Y. 1994); *E.I. du Pont de Nemours & Co. v. Polaroid*  
10 *Graphics Imaging, Inc.* 706 F.Supp. 1135, 1141-42 (D. Del. 1989); It is incumbent upon  
11 the examiner to identify wherein each and every facet of the claimed invention is disclosed  
12 in the applied reference. (*Ex Parte Levy*, 17 USPQ2d 1461, 1462 (Bd. Pat. App. & Int'l  
13 1990)). Since the structures of the cited art differ from that shown herein, the reference  
14 must be discounted as anticipating the present invention.

15 The applicant has demonstrated differences between features of the referenced  
16 prior art and the present invention as specified and claimed. The applicant has presented  
17 features of the present invention which are not found within the claims of either reference  
18 patent. The applicant has presented law and argument to support the contention that the  
19 rejection of claims under 35 U.S.C. 102(b) should be withdrawn and now respectfully  
20 requests the Examiner to withdraw the rejections.

21  
22  
23 **VIII. CLAIM REJECTIONS 35 USC 103(a)**

24 At paragraphs 45-47 the Examiner sets forth Claim Rejections under 35 USC 103.

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

1

2 **D. Rejections under 35 USC 103(a) under Russell:** At paragraph 46 the Examiner  
3 rejects claims 4, 5, 7, 8 and 13 as being unpatentable over Russell, US 2,204,029.

4

5 **Regarding claim 4:**At page 13 the Examiner states "Regarding claim 4, Russell  
6 ('029) further discloses the drum is cylindrical (see col. 1, lines 35-37) and includes an  
7 upper bearing support (11) extending diametrically across the drum and including spaced  
8 apart side bars positioned vertically on edge, and having end plates also positioned on edge  
9 by which the upper bearing support is detachably secured to the surrounding wall (see figs.  
10 1 and 2; col. 1, lines 46-49), the bearing support also includes a central horizontal plate  
11 (just radially outside 10, see figs. 1 and 2), the upper bearing means (10) is detachably and  
12 fixedly mounted on the plate, whereby great space is provided for material to flow (see fig.  
13 2). Russell ('029) fails to disclose the bearing support being between the spreader and the  
14 upper bowl. However, it has been held that it is obvious to rearrange parts in such a  
15 manner ..."

16 Claim 4 has been amended to depend from Claim 3. Claim 3 depends from claim  
17 1. The amendment of claim 1 adds structure re: the spreader (90) as follows: the spreader  
18 (90) having a bottom (92) which is of conical shape. The amendment of claim 3 adds  
19 further structure re: the spreader (90) as follows: the spreader (90) bottom plate (92)  
20 having vertical blades (94) opening radially outwardly following the downward slope of  
21 the bottom plate (92).

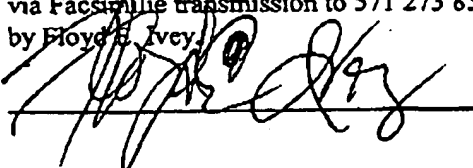
22 Your applicant respectfully contends that Russell ('029) does not teach, direct or  
23 suggest a spreader structure of the spreader (90) of the present invention. Hence, Russell  
24 is not a prior art reference which renders obvious claim 4 of your applicant's invention.

25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey

Application No. 09/638,017

28



60

Z:\PCUsers\Whited\Petition Revival\Continuing Application.DRAFT.060106.wpd

1 The Examiner, in light of the amendment of claim 4 depending from 3 which depends  
2 from claim 1, is requested to withdraw the rejection over Russell and to allow claim 4 as  
3 amended.

4  
5 Regarding claim 5: At page 13 the Examiner states "Regarding claim 5, the  
6 support includes holes (see fig. 2)."

7 Claim 5 depends from Claim 4 which in turn depends from claim 3. With the  
8 amendment of claim 1 and 3 and in amending claim 4 to depend from claim 3, your  
9 applicant respectfully urges the Examiner to find that Russell does not render claim 5  
10 obvious and asks the Examiner to withdraw the rejection and allow claim 5 and all claims  
11 depending therefrom.

12  
13 Regarding claim 7: At page 13 the Examiner states "Regarding claim 7, a rotary  
14 applicator (20, second one from top) is disclosed and is between the upper bearing support  
15 and the upper bowl."

16 Claim 7 depends from Claim 5. In light of the amendments of claim 1 and 3, from  
17 which claim 5 depends, your applicant urges the Examiner to find that Russell does not  
18 render claim 7 obvious and asks the Examiner to withdraw the rejection and allow claim 7  
19 and all claims depending therefrom.

20  
21 Regarding claim 8: At page 13-14 the Examiner states "Regarding claim 8, the  
22 spreader and applicator include a bottom plate (15) extending substantially its full area and  
23 vertical blades (20) extending upwardly extending upwardly from the bottom plate."

24 The Examiner is referred to the discussion of the structure of Russell (spreader (19,

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

61

Z:\P\Client\White\Petition Revival\Continuing Application.DRAFT.060106.wpd

1 20)) indicated by the Examiner to have the structure of the spreader (90) of the present  
2 invention. The indicated discussion is found at I. **CLAIM REJECTIONS 35 USC 102,**  
3 **A. Rejections under 35 USC 102 under Russell:** Regarding claim 1: Here the  
4 Examiner will be refreshed in the structural distinction between the "spreader" of Russell  
5 from the spreader (90) of the present invention.

6 Claim 8 depends from Claim 7. In light of the amendments of claim 1 and 3, from  
7 which claim 5 and 7 depends, your applicant urges the Examiner to find that Russell does  
8 not render claim 8 obvious and asks the Examiner to withdraw the rejection and allow  
9 claim 8 and all claims depending therefrom.

10  
11 Regarding claim 13: At page 14 the Examiner states "Regarding claim 13, it is  
12 quite unclear what is being claimed and this claim appear not to be enabled (see discussion  
13 with regard to section 112 above). As best understood by the examiner, claim 13 is  
14 unpatentable over Russell ('029). Russell states the "[p]ower is applied to the shaft 13 in  
15 any well known manner" (col. 1, lines 53-55)."

16 The "power means" of claim 13 is examined by reference to the Specification at  
17 page 12/lines 14-24 which states:

18 A drivemotor 151 ( Fig. 13) is mounted on an exterior platform 152, and a drive  
19 belt 153 therefrom drives the central shaft 68 (see also Fig. 14). This belt  
20 extends through the void zone 150, and is thus protected from the falling grain  
21 mixture, but however, the grain mixture is enabled 20 to fall freely without  
22 interruption over the top of the hogback 76. Diagonal braces 154 (Fig. 13), secured  
23 at their upper ends to the drum, provide support for the platform, and thus the drive  
24 motor, and this structure and support are part of the self-contained nature of the

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd Ivey

Application No. 09/638,017

1 device.

2  
3 Thus claim 13 is respectfully contended to convey the following: the first phrase  
4 "power means mounted on the exterior of the drum, and" claims that a power means,  
5 including a drivemotor, is mounted on the exterior of the drum; the second phrase "power  
6 transmitting means operably connecting the power means and the shaft and extending into  
7 the drum and underlying the hog back throughout its extent to the shaft and thereby  
8 shielded by the hogback from grain falling through the drum." claims that a means exists  
9 to transmit the power means to the shaft, with that means shielded by the inverted "V"  
10 shaped hogback, to rotate the shaft. We see referenced in the indicated portion of the  
11 specification a transmission means to include a belt. Hence, a person of ordinary skill in  
12 the drive arts will appreciate that a drive belt will interconnect the motor with the shaft for  
13 operational rotation.

14 In light of this argument your applicant respectfully requests the Examiner to  
15 withdraw the rejection of claim 13 and all claims depending therefrom and to allow the  
16 claim.

17  
18 **E. Rejections under 35 USC 103(a) under Shiner ('696):** At paragraph 47 the Examiner  
19 rejects claims 4, 5 and 7 as being unpatentable over Shiner ('696).

20  
21 **Regarding claim 4:** At page 14 the Examiner states "Regarding claim 4, Shiner  
22 ('696) further discloses the drum is cylindrical (see page 1, line 84) and includes an upper  
23 bearing support (20,27, second from top in fig. 1) between the spreader and the upper bowl  
24 extending diametrically across the drum and includes spaced apart side bars (20)

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd S. Ivey

Application No. 09/638,017

63

Z:\PC\client\Whited\Patition Revival\Continuing Application.DRAFT.060106.wpd



1 positioned vertically on edge and having end plates also positioned on edge by which the  
2 upper bearing support is secured to the surrounding wall, the upper bearing support also  
3 includes a central horizontal plate (19) secured to the side bars, the bearing means is  
4 mounted on the plate whereby relatively great space is provided for material to flow (see  
5 figs. 1 and 2). Shiner ('696) fails to explicitly disclose that the support is detachable.  
6 However, it has been held that making a part detachable is obvious.... In the instant case,  
7 it is considered that it would have been obvious to one of ordinary skill in the art to have  
8 made the support detachable, to facilitate maintenance of the apparatus."

9 Claim 4 has been amended to depend from Claim 3. Claim 3 depends from claim  
10 1. The amendment of claim 1 adds structure re: the spreader (90) as follows: the spreader  
11 (90) having a bottom (92) which is of conical shape. The amendment of claim 3 adds  
12 further structure re: the spreader (90) as follows: the spreader (90) bottom plate (92)  
13 having vertical blades (94) opening radially outwardly following the downward slope of  
14 the bottom plate (92).

15 Your applicant respectfully contends that Shiner does not teach, direct or suggest a  
16 spreader structure of the spreader (90) of the present invention. Hence, Shiner is not a  
17 prior art reference which renders obvious claim 4 of your applicant's invention. The  
18 Examiner, in light of the amendment of claim 4 depending from 3 which depends from  
19 claim 1, is requested to withdraw the rejection over Shiner and to allow claim 4 as  
20 amended.

21  
22 Regarding claim 5: At page 14-15 the examiner states "Regarding claim 5, the  
23 support includes hole (See fig. 2)."

24 Claim 5 depends from Claim 4 which in turn depends from claim 3. With the  
25

26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

64  
Z:\P\Client\W\Ivey\Petition\Revival\Continuing Application\Draft\060106.wpd

1 amendment of claim 1 and 3 and in amending claim 4 to depend from claim 3, your  
2 applicant respectfully urges the Examiner to find that Shiner does not render claim 5  
3 obvious and asks the Examiner to withdraw the rejection and allow claim 5 and all claims  
4 depending therefrom.

5  
6 Regarding claim 7: At page 15 the Examiner states "Regarding claim 7, the  
7 treater includes a rotary applicator (24, second from top in Fig. 1) positioned between the  
8 upper bearing support and the upper bowl."

9 Claim 7 depends from Claim 5. In light of the amendments of claim 1 and 3, from  
10 which claim 5 depends, your applicant urges the Examiner to find that Shiner does not  
11 render claim 7 obvious and asks the Examiner to withdraw the rejection and allow claim 7  
12 and all claims depending therefrom.

13  
14 F. Law regarding 35 U.S.C. 103.

15 The absence of a feature similar to the feature or features of the present invention  
16 are respectfully argued as references which teach away from the disclosed and claimed  
17 invention and thus are not appropriately a basis of rejection under 103. *In re Gurley* 27  
18 F.3d 551 at 553(1994 cafc). In general a reference will teach away if the line of  
19 development flowing from the references disclosure is unlikely to be productive of the  
20 result sought by the applicant. The lack of the elements, in the citations, as found in your  
21 applicant's structure and method, demonstrates that the teachings of the citations do not  
22 flow toward the elements of your applicant's invention.

23 The Examiner has urged prior art alone and in combination as rendering obvious  
24 the present invention. However, there is not demonstrated teaching, suggestion or

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571.273.8300  
by Floyd E. Ivey.

Application No. 09/638,017

65

Z:\PC\client\White\Petition\Revival\Continuing Application\Draft\060106.wpd

1 motivation to so combine the several components in the manner done by your present  
2 applicant. The Court in *In re Fulton* 391 F.3d 1195, 1199-1200 (C.A.Fed. 2004) noted the  
3 following:

4 Obviousness is a "question of law based on underlying findings of fact." *In re*  
5 *Gartside*, 203 F.3d 1305, 1316 (Fed.Cir.2000). The Board's factual findings are  
6 upheld unless they are unsupported by substantial evidence. *Id.* Substantial  
7 evidence is "such relevant evidence as a reasonable mind might accept as adequate  
8 to support a conclusion." *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229-30, 59  
9 S.Ct. 206, 83 L.Ed. 126 (1938). What the prior art teaches, whether it teaches away  
10 from the claimed invention, and whether it motivates a combination of teachings  
11 from different references are questions of \*1200 fact. *Id.*; *In re Berg*, 320 F.3d  
12 1310, 1312 (Fed.Cir.2003). Other factual findings related to obviousness may  
13 include "(1) the scope and content of the prior art; (2) the level of ordinary skill in  
14 the prior art; (3) the differences between the claimed invention and the prior art;  
15 and (4) objective evidence of nonobviousness." *In re Dembiczak*, 175 F.3d 994,  
16 998 (Fed.Cir.1999), *abrogated on other grounds In re Gartside*, 203 F.3d 1305  
17 (Fed.Cir.2000) (abrogating the holding *In re Dembiczak* that the Board's findings  
18 of fact are reviewed for clear error); *see also Graham v. John Deere Co.*, 383 U.S.  
19 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966).

20  
21 Absent a demonstrated teaching, suggestion or motivation to so combine the  
22 several components, the recitation of prior art does not form a basis for rejection as  
23 obvious. *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1361, 48 USPQ2d 1225,  
24 1240 (Fed. Cir. 1998), rehearing denied & suggestion for rehearing in banc declined, 161

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 871 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

66

Z:\Client\Whited\Petition\Revival\Continuing Application.DRAFT.060106.wpd

1 F.3d 1380 (Fed. Cir. 1998) ("The ultimate question is whether, from the evidence of the  
2 prior art and the knowledge generally available to one of ordinary skill in the relevant art,  
3 there was in the prior art an appropriate teaching, suggestion, or motivation to combine  
4 components in the way that was done by the inventor."); *In re Fulton* 391 F.3d 1195, 1200  
5 (C.A.Fed. 2004) ("When a rejection depends on a combination of prior art references,  
6 there must be some teaching, suggestion, or motivation to combine the references." *In re*  
7 *Rouffet*, 149 F.3d 1350, 1355 (Fed.Cir.1998). Stated another way, the prior art as a whole  
8 must "suggest the desirability" of the combination. *In re Beattie*, 974 F.2d 1309, 1311  
9 (Fed.Cir.1992) (internal quotation omitted); *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d  
10 1340 (Fed.Cir.2000) ("Trade-offs often concern what is *feasible*, not what is, on balance,  
11 *desirable*. Motivation to combine requires the latter." (emphasis added)). The source of the  
12 teaching, suggestion, or motivation may be "the nature of the problem," "the teachings of  
13 the pertinent references," or "the ordinary knowledge of those skilled in the art." *In re*  
14 *Rouffet*, 149 F.3d at 1355."); *Chiuminatta Concrete Concepts, Inc. v. Cardinal Industries,*  
15 *Inc.*, 145 F.3d 1303, 1312, 46 USPQ2d 1752, 1759 (Fed. Cir. 1998) ("for a claim to be  
16 invalid for obviousness over a combination of references, there must have been a  
17 motivation to combine the prior art references to produce the claimed invention."); *Kahn v.*  
18 *General Motors Corp.*, 135 F.3d 1472, 45 USPQ2d 1608 (Fed. Cir. 1998), cert. denied,  
19 119 S. Ct. 177 (1998); *Fromson v. Anitec Printing Plates, Inc.*, 132 F.3d 1437, 1447, 45  
20 USPQ2d 1269, 1276 (Fed. Cir. 1997), cert. denied, 119 S. Ct. 56 (1998) ("there is no  
21 suggestion or teaching in the prior art to select from the various known procedures and  
22 combine specific steps, along with a new electrical structure, in the way that is described  
23 and claimed by [the patentee]."); *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d  
24 1573, 1578-79, 42 USPQ2d 1378, 1383, 1384 (Fed. Cir. 1997) ("the record must provide

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

1 a teaching, suggestion, or reason to substitute computer-controlled valves for the system of  
2 hoses in the prior art. The absence of such a suggestion to combine is dispositive in an  
3 obviousness determination."; "Without a suggestion or teaching to combine, [the accused  
4 infringer's] case of obviousness suffers a significant deficiency."); Kolmes v. World Fibers  
5 Corp., 107 F.3d 1534, 1541, 41 USPQ2d 1829, 1833 (Fed. Cir. 1997) (the district court  
6 did not err in holding the patent in suit not invalid for obviousness; the patent concerned a  
7 cut-resistant yarn for use in making products such as gloves, which, unlike prior art yarns,  
8 did not use metallic components such as wire; the yarn includes two core strands wrapped  
9 in opposite directions around two covering strands; one core strand is fiberglass; the other  
10 core strand and the covering strands are nylon or other material; the patent's claim  
11 required, inter alia, that there be a two strand core and that the covering strands be  
12 "wrapped about said core at the rate of 8-12 turns per inch."; a prior art reference showed  
13 a yarn with a wrapping rate of 2-24 turns per inch, but the reference disclosed the use of  
14 wire, and the accused infringer "has shown no suggestion or motivation to modify the  
15 teaching of the [reference] with regard to non-metallic fibers."); Litton Systems, Inc. v.  
16 Honeywell, Inc., 87 F.3d 1559, 1568, 39 USPQ2d 1321, 1327 (Fed. Cir. 1996) ("[N]one  
17 of the prior art references, alone or in combination, teach or suggest a method [specified in  
18 the patent's claims]. The prior art simply does not contain many limitations in the claimed  
19 method. Furthermore, the record discloses no teaching or suggestion to combine any of  
20 these references. The absence of a suggestion to combine is telling in an obviousness  
21 determination."); B.F. Goodrich Co. v. Aircraft Braking Systems Corp., 72 F.3d 1577, 37  
22 USPQ2d 1314 (Fed. Cir. 1996), discussed at N. 12.10(1) infra; Pro-Mold and Tool Co.,  
23 Inc. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 37 USPQ2d 1626 (Fed. Cir. 1996);  
24 Beachcombers, International, Inc. v. WildeWood Creative Products, Inc., 31 F.3d 1154,

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd S. Ivey

Application No. 09/638,017

68

Z:\PC\Tech\White\Patition Revival\Continuing Application.DRAFT.060106.wpd

1 1161, 31 USPQ2d 1653, 1659 (Fed. Cir. 1994) (the patent claims in suit were not obvious  
2 in view of the prior art because the art did "not remotely suggest configuring" the device  
3 as required by the claim); Heidelberg Druckmaschinen AG v. Hantscho Commercial  
4 Products, Inc., 21 F.3d 1068, 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1993) ("When the  
5 patented invention is made by combining known components to achieve a new system, the  
6 prior art must provide a suggestion or motivation to make such a combination."). Texas  
7 Instruments Inc. V. U.S. Int'l Trade Comm'n, 988 F.2d 1165, 26 USPQ2d 1018 (Fed. Cir.  
8 1993) for the proposition that obviousness is not supported where the references do not  
9 demonstrate to combine to produce the invention as presently disclosed.

10 The issue of viewing the present invention as a template is an inappropriate basis  
11 for rejection on the basis of obviousness. The prior art "references in combination do not  
12 suggest the invention as a whole claimed in the ... patent. Absent such a suggestion to  
13 combine the references, respondents can do no more than piece the invention together  
14 using the patented invention as a template." Heidelberg Druckmaschinen AG v.  
15 Hantscho Commercial Products, Inc., 21 F.3d 1068, 30 USPQ2d 1377 (Fed. Cir. 1993  
16 where the court held that "The motivation to combine references can not come from the  
17 invention itself."

18 The applicant respectfully submits that the references, alone and in combination,  
19 otherwise must constitute improper use of hindsight reconstruction. *In Re Pleuddeman*,  
20 910 F.2d 823, 828, 15 US PQ2d 1738, 1742 (Fed. Cir. 1990); *In Re Mahurkar Patent*  
21 *Litigation*, 831 F.Supp. 1354, 28 US PQ2d 1801 (N.D. Ill. 1993). The cases cited stand  
22 for the rule that decomposing an invention into its constituent elements, finding each  
23 element in the prior art, and then claiming that it is easy to reassemble these elements into  
24 the invention, is a forbidden ex post analysis. The applicant submits that it is

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

1 impermissible to use the claimed invention as an instruction manual or template to piece  
2 together the teachings of the prior art so that the claimed invention is rendered obvious.  
3 The references simply do not teach to combine the requisite features of your applicant's  
4 invention. "Before the PTO may combine the disclosures of two or more prior art  
5 references in order to establish Prima Facie obviousness, there must be some suggestion  
6 for doing so, found either in the references themselves or in the knowledge generally  
7 available to one of ordinary skill in the art.(IN RE Jones, 958 F.2d 347, 351, 21 USPQ2d  
8 1941, 1943-44 (Fed. Cir. 1992)). "Evidence of a suggestion, teaching, or motivation to  
9 combine prior art references may flow, inter alia, from the references themselves, the  
10 knowledge of one of ordinary skill in the art, or from the nature of the problem to be  
11 solved. See Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. Although a reference need  
12 not expressly teach that the disclosure contained therein should be combined with another,  
13 see Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461, 1472, 43 USPQ2d 1481,  
14 1489 (Fed. Cir. 1997), the showing of combinability, in whatever form, must nevertheless  
15 be "clear and particular." Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617." Winner  
16 International Royalty Corporation v. Ching-Rong Wang, 202 F.3d 1340(CAFC 2000).

17 The applicant respectfully requests the Examiner to withdraw the 103 rejections  
18 in light of the argument, amendments and responses submitted and to allow the claims as  
19 amended.

#### 20 21 22 23 SUMMARY OF AMENDMENTS AND REMARKS

24 The applicant has submitted a Petition for Revival under 37 CFR 1.137(b) and

25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

70

Z:\IPC\Rev\Whited\Petition\Revival\Continuing Application\_DRAFT.060106.wpd

209  
1 this Amendment and Response to the Office Action of December 5, ~~2005~~. Accordingly,  
2 the applicant has made a good faith attempt to place the application in condition to be  
3 returned to examination. Your applicant requests the Office of Petitions to return this  
4 application to prosecution and to withdraw the said objections and rejections and to allow  
5 the claims as set forth.

6 Respectfully submitted,

7  
8  
9 FLOYD E. IVEY

10 Registration No. 35,552

11  
12 Telephone No. (509) 735-3581

13  
14 \*\*\*\*\*

15  
16 **CERTIFICATE OF TRANSMISSION: FOR OFFICIAL FILING**

17 The undersigned hereby certifies that this correspondence is being facsimile transmitted to  
18 the Patent and Trademark Office Fax No. (571) 273 8300 on August 1, 2006.

19 Signature: FLOYD E. IVEY

20  
21  
22  
23  
24  
25  
26 Certificate of facsimile Official Filing  
27 on August 1, 2005 to Office of Petitions  
28 via Facsimile transmission to 571 273 8300  
by Floyd E. Ivey.

Application No. 09/638,017

71

Z:\PClient\Whited\Petition\Revival\Continuing Application.DRAFT.060106.wyd